

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CR-17-239-D
)	
JERRY DRAKE VARNELL,)	
)	
Defendant.)	

* * * * *

TRANSCRIPT OF PROCEEDINGS
HAD ON FEBRUARY 12, 2019,
BEFORE THE HONORABLE TIMOTHY D. DeGIUSTI
U.S. DISTRICT JUDGE, PRESIDING
AND A JURY

* * * * *

OPENING STATEMENT OF THE DEFENDANT

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

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P R O C E E D I N G S

(The following is an excerpt of the proceedings had on February 12, 2019, containing only the Defendant's opening statement:)

MS. FRANKLIN: May it please the Court, counsel, and ladies and gentlemen of the jury.

First of all, I would like to thank you for your time and attention as we are not obligated to give an opening statement, but this is now our opportunity to tell you what this case is really about and the evidence that will be given to you over these next several days of testimony.

Our request is that you do listen to all of the facts that you hear. And if you can't hear, let us know. If you can't see, let us know, because we do want you to see all of the evidence.

They have the burden of proof, the government does, in this case to prove beyond a reasonable doubt that Mr. Varnell is guilty of this offense. And it is anticipated that you will see, you will hear evidence of what happened on August 11th of 2017, but that's not the story that we're here to tell you today. That's not the evidence that you're going to be hearing in this case.

While Mr. Varnell may have participated during -- on August 11th with an undercover agent, you will hear evidence in this case regarding who Mr. Varnell is, his mental illness

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1 that he has suffered, his personality traits, and the
2 extensive actions of the government, not for a month, two
3 months, three months, but over five months, the actions that
4 the government had to take in order to lead the events that
5 took place on August 11th.

6 You will hear evidence, ladies and gentlemen, that as a
7 young teenager, it was apparent that Mr. Varnell suffered from
8 something that most people don't like to -- don't even know
9 about. And if they do know about it, they don't want to talk
10 about it. And that is a mental illness.

11 As young as 16, Mr. Varnell was hospitalized and given
12 psychiatric medication for his disorder, with doctors
13 determining that medication was necessary for him. Suffering
14 with a mental illness such as schizophrenia is challenging,
15 but Mr. Varnell did attempt to have a slightly normal life.

16 He married and he made efforts to go to Southwestern
17 Oklahoma State University to further his education in college;
18 although, dropping classes was quite common for him.

19 In 2013, you will hear evidence that Mr. Varnell suffered
20 what was described as a severe schizophrenic episode. And at
21 the age of 19, he was, again, admitted for inpatient
22 treatment, this time for over a month.

23 After his release from treatment at that time, there was
24 a judge in Beckham County, Oklahoma, that determined that he
25 was incompetent to take care of his personal affairs, and he

1 ruled and issued an order granting guardianship of him to his
2 parents even though, of course, he was of legal age at that
3 time.

4 He continued to struggle at Southwestern. And
5 eventually, though, it just didn't work out. He moved back to
6 his parents' farm in Sayre, Oklahoma, in a trailer, separate
7 from their personal residence, but that way they could keep
8 tabs on him.

9 He had no bank account, no money, no means of anything to
10 take care of himself without his parents' assistance. But he
11 did have a laptop. And he had a phone. So he could
12 communicate random thoughts that he had and ideas to anyone
13 who would care to listen.

14 It was in 2015 that the individual that eventually
15 becomes this government informant, Brent Elisens, first
16 reached out to Mr. Varnell through Facebook Messenger. The
17 initial conversations did link up -- or they did talk about
18 linking up on a computer project.

19 Mr. Varnell's response to that exchange became the
20 foundation of an acquaintance and what he believed to be
21 friendship but later, in fact, ladies and gentlemen, it was a
22 trap with manipulation, inducement, and persuasion from
23 Elisens' benefit through the FBI.

24 2016 proved to be a very difficult year for Mr. Varnell.
25 His wife cheated on him, left him, divorced him. His very

1 best friend committed suicide by hanging. The circumstances
2 surrounding that, along with his mental illness, seemed
3 overwhelming to him, and he eventually just withdrew from
4 Southwestern and cited his mental health as a reason.

5 It was also around that period of time that Brent Elisens
6 and Mr. Varnell and others started group chatting, talking
7 about the upcoming election. They talked about survival
8 skills, windmills, hydroelectric dams, anything that you could
9 think of that people with mental illness might talk about.

10 Mr. Varnell talked about having a secret room in a
11 storage container in case shit hit the fan. He was ready to
12 go. He was going to get a credit card so he could order
13 stuff -- but, you know, that never happened -- in the event
14 that martial law erupted.

15 And Brent Elisens was the leader of this group, and you
16 will see that. He discussed, along with the others -- and I
17 would describe them as keyboard cowboys -- they agreed to meet
18 in Oklahoma City to make their plans and discuss this
19 build-alone community in Missouri.

20 And Brent Elisens had the operational mindset. He came
21 up and encouraged the other individuals in the group, Hey,
22 we're talking stuff. We need to decrypt this conversation
23 because the government might be watching. They might be
24 listening, so we have to do this.

25 And it was Mr. Varnell that said, We're not discussing

1 anything that's bad. There is no reason to use TextLock. But
2 Elisens encouraged them, so they all did it.

3 Elisens provided leadership roles for the group, a
4 mission statement, and he stated core beliefs. And those core
5 beliefs that were stated were harmlessness, nonviolence, and a
6 love for all beings.

7 But the fact of the matter is, ladies and gentlemen, that
8 Brent Elisens had his own mental health struggles that he was
9 dealing with. He had been diagnosed as bipolar, having PTSD,
10 a plethora of issues. And he started messaging Mr. Varnell
11 separately from the group.

12 While Mr. Varnell was dealing with his personal
13 struggles, so was Mr. Elisens. After having been convicted in
14 federal court and serving a lengthy prison sentence, he had
15 been placed on supervised release. And it wasn't going very
16 well for him.

17 He couldn't stop using drugs, and he decided he wanted to
18 throw away his mental health medication. Clearly, in
19 violation of his supervision. He couldn't -- he continued to
20 struggle, getting sanctioned, but he knew that eventually the
21 judge was going to be impatient and he was going to go back to
22 federal prison. So that is when he said, Hey, I'm going off
23 the grid.

24 The election of 2016 was also coming up in that period of
25 time. There was tremendous anxiety among even those that

1 don't suffer with paranoia and mental illness about the
2 election results.

3 In late October of 2016, approximately a month before the
4 election, Mr. Elisens was at an all-time low, and he told
5 Mr. Varnell he was going to leave everything behind and
6 abscond from his supervision. Mr. Varnell discouraged him.

7 But, through his computer screen, Mr. Varnell also may
8 have responded with some ideas of his own, perhaps to show
9 solidarity to him or support or maybe just to get a reaction
10 out of him. But all it was, was a message on the computer.
11 Either way, at the time of the meeting that they were supposed
12 to have in Oklahoma City, Mr. Varnell was a no-show.

13 Mr. Elisens and Mr. Varnell continued to message each
14 other and talk about being in the wake of martial law with the
15 election results coming up, none of which was more than two
16 mentally-ill individuals puffing up about what either of them
17 were going to do when shit hits the fan.

18 Even after the election was over, Mr. Varnell may have
19 still been hyped up. He may have made disturbing statements
20 on his computer keyboard. But that, ladies and gentlemen, was
21 not any crime. He had no specific plan, he had no specific
22 target, just mere dissatisfaction was stated.

23 Elisens' response, however, was -- he suggested to
24 Mr. Varnell, Hey, you come with me. We'll go off the grid.
25 We'll live off the land. But Mr. Varnell had no interest in

1 that. He stayed in his trailer in Sayre with his parents'
2 continued support.

3 Mr. Elisens, however, did go to New Mexico. And what do
4 you know? It was cold. He lived off the grid for as long as
5 he could stand it. And then he came back. And by the time he
6 came back, his mental health was so messed up that he was
7 checked into Griffin Memorial Hospital for a period of days.
8 And from there he was marched into the federal court where she
9 sentenced him to nine months in federal prison.

10 It was after this pronouncement of his sentence that he
11 decided to tell his lawyer that he had some vital information
12 that he needed to share. This information, ladies and
13 gentlemen, was not verified as truth but taken at face value
14 for no reason whatsoever. In fact, Elisens actually lied to
15 the FBI.

16 It was on October 26th that he was brought over, I'm
17 presuming an orange jumpsuit, to sit down and talk to these
18 folks to tell them what he knew. He lied, and he said that
19 Mr. Varnell had threatened the Eccles building. He was
20 concerned about the Eccles building.

21 And in his recorded interview in January 2017, he assured
22 the government that he would do everything he needed to do to
23 preserve his computer and his phone that were in his parents'
24 custody. He would not sanitize it.

25 But he also assured the government that, Once I'm

1 released, I can build steady contact with Mr. Varnell and I
2 can build your case for you. That is exactly what he did in
3 earning \$23,000. He built this case as an agent of the FBI.

4 You will see and you will hear that after his release
5 from jail -- because he had jail time to do in addition to
6 prison time, but after his release from jail on -- I believe
7 it was St. Patrick's Day in 2017, his first contact with the
8 agents, they don't get his computer. They still don't verify
9 anything.

10 At face value, he screenshots messages and gives them to
11 agents out of context without explaining or, again, telling
12 him that he had initially lied to them.

13 Once he is released from custody and he starts making
14 contact with Mr. Varnell at their direction, things with
15 Mr. Varnell had actually changed. Months had gone by.

16 Mr. Varnell's focus was now -- he's going to do drug
17 research. He's going to develop a drug and he has -- he's
18 formulated a GoFundMe® page. He wants to raise money. He
19 wants the public to give him money to do drug research, even
20 though he has never done drug research, with no educational
21 background or wherewithal.

22 When Elisens first reached out to Mr. Varnell, he is not
23 giving him encrypted messages. He is not talking to him about
24 any ideas of militias or being out for blood or suggesting
25 that he had any idea whatsoever to commit any crime.

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1 In order to attempt to get Mr. Varnell started in a
2 noteworthy conversation, Mr. Elisens starts talking about the
3 grimy situation at the Cleveland County jail, how crooked the
4 lawyers are, how crooked the judges are, how the system -- I
5 won't repeat what he says.

6 And he stated that something needs to be done. This is
7 Mr. Elisens talking. Something needs to be done about this
8 revenue generation and the career building.

9 And he told Mr. Varnell, at the specific direction of the
10 FBI, I got a guy who does well with chemicals. And when
11 Mr. Elisens then asked Mr. Varnell, "How can we make the world
12 a better place," Mr. Varnell's response was, "IDK." I don't
13 know.

14 This is where the investigation should have ended, ladies
15 and gentlemen. But, rather, you will hear the testimony and
16 the evidence when the future crime for August 11th was
17 incepted by the FBI.

18 After weeks of tuning up Mr. Varnell -- he has told him
19 that he's got a guy who does well with chemicals, he is signed
20 up as an agent, he is given the -- he's armed to go see
21 Mr. Varnell. He's armed with botanicals. And we know what
22 I'm talking about.

23 He takes botanicals with him to endear Mr. Varnell,
24 because that was the whole guise of him going to go see
25 Mr. Varnell is offering a blunt and we can smoke it together.

1 He goes there with a recorder. And on April 24th, he
2 gets him high. And 45 minutes into the conversation -- so
3 it's got full effect, I'm sure -- Mr. Elisens starts talking
4 to Mr. Varnell and saying, Hey, we can still fix the problems
5 from the inside, the shit we talked about.

6 And all Mr. Varnell can say is, I'm pretty high right
7 now.

8 But he continues and he tells Mr. Varnell, I've got a guy
9 with mad amounts of ammonium.

10 And Mr. Varnell's response is, I've calmed down a lot
11 since Trump won.

12 And I'll tell you, ladies and gentlemen, the recording --
13 it's the quality -- this is the FBI's recording. You may --
14 it may be low for you to hear, but I ask that you pay very
15 close attention to the evidence as it is played.

16 The evidence will show that on April 24th, when Elisens
17 went out there, again, Mr. Varnell had no idea for committing
18 a crime involving an explosive device. He wasn't willing to
19 commit any crime that involved an explosive device. But,
20 again, that didn't stop the FBI.

21 Mr. Varnell was not to be watched from a distance. This
22 was an operation. Not an investigation but an operation.
23 That's what they called it. The operation continued with
24 Elisens' influence, his intimate knowledge of Mr. Varnell's
25 psychosis and his paranoid tendencies.

1 The operation consisted with Elisens' persistence. And
2 when he wouldn't respond, the FBI said, Hey, you need to
3 message him. You haven't heard from him in three days. You
4 need to push him. Total encouragement on every step of this
5 process.

6 He's given instructions. Total encouragement. You need
7 to pick this. You need to pick a date. You need to do this.
8 You need to do that. You need to get this. You need to get
9 that.

10 The introduction and use of an undercover agent whose
11 purpose -- whose stated purpose to Mr. Varnell was to enact a
12 new American Revolution, this undercover, I presume you will
13 hear, he talks about, Hey, there's people out there, there's
14 these keyboard cowboys and they just don't do anything but
15 talk. We're here to take action. The undercover agent says,
16 It's time for a new American Revolution. And if you're not
17 willing to act, you're a sheep -- sheeple.

18 The mighty resources of the federal government providing
19 everything needed for this crime. When I say everything, I
20 mean everything. They asked him to get totes. They asked him
21 to get a van. They asked him to get gloves, electrical tape,
22 everything. He got nothing, because they provided it for him.
23 Because if they didn't provide it, it wasn't going to happen,
24 and they knew it.

25 Two days before Mr. Varnell -- finally, the federal

1 government just discovered, Hey, if we don't come up with a
2 van, this is not going to happen because he's not going to do
3 it. Even though they had planted someone in his Facebook for
4 months, planted someone who said, You know, I've got a box
5 truck that I've been working on and it's just sitting here
6 wasting space out in my yard, do you know anybody who could
7 use a box truck?

8 The whole time you've got the UCE and the undercover
9 saying, You need to get a box truck, Mr. Varnell. And then
10 you've got someone else telling Mr. Varnell, Hey, I've got a
11 box truck.

12 And Mr. Varnell is like, Well, I don't know what to tell
13 you. You've got a box truck. I don't know anybody that needs
14 a box truck.

15 While most people might be able to think clearly and see
16 through the manipulation and persuasion that was being done in
17 this case, for Mr. Varnell, however, he's not like a normal
18 person. Once the FBI took it upon itself to build this case
19 and target him, they made it impossible in his own mind to
20 back out.

21 Not only is he affected daily by his severe mental
22 illness that includes levels of paranoia and effects of his
23 medication, but to him, also, to back out would mean that he
24 was also one of the problems in his mind, just another
25 keyboard cowboy and a sheep that doesn't want to be part of a

1 new American Revolution, as stated by the undercover.

2 While it is anticipated that you will hear evidence that
3 Mr. Varnell didn't back out, you will also hear evidence of
4 his continued failures to act, his failures to take any
5 initiative whatsoever.

6 At the end of the case, the evidence will show that but
7 for the government's actions and their inducement and their
8 persuasion, Mr. Varnell would still be living in his trailer
9 in Sayre, Oklahoma, posing no threat to anyone.

10 We believe that they will fail to meet their burden of
11 proof and that the evidence will show that, in fact,
12 Mr. Varnell is not guilty.

13 We are going to ask you, ladies and gentlemen, to follow
14 your oaths, follow the law that is given to you, and
15 ultimately find Mr. Varnell not guilty of any offense.

16 Thank you very much.

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19 (End of requested excerpt.)
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1 CERTIFICATE OF OFFICIAL REPORTER

2 I, Christina L. Clark, Federal Official Realtime Court
3 Reporter, in and for the United States District Court for the
4 Western District of Oklahoma, do hereby certify that pursuant
5 to Section 753, Title 28, United States Code that the
6 foregoing is a true and correct transcript of the
7 stenographically reported proceedings held in the
8 above-entitled matter and that the transcript page format is
9 in conformance with the regulations of the Judicial Conference
10 of the United States.

11
12 Dated this 22nd day of February, 2019.

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14 s/CHRISTINA L. CLARK
15 Christina L. Clark, RPR, CRR
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